IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1602 OF 2005

Jai Bhavani Sahakari Pani
Purwatha Sanstha Ltd.& anr. ...Appellants
Vs.
Aaba Dnyanu Pati & Ors. ...Respondents

Mr.Amit Borkar for the Appellants
Mr.P.D.Dalvi for the Respondent No.2.

CORAM: A.S.OKA, J.
DATED: MARCH 21,2006.

P.C.:

1. Heard Shri Borkar for the Appellants and Shri Dalvi for the Respondent No.2. A suit filed by the Respondents has been decreed and it is held that the Appellants are not entitled to recover percolation water charges from the Plaintiffs.

2. Shri Borkar for the Appellants submitted that under the bye laws of the Appellant No.1-Society the percolation water charges can be recovered even from the non members of the society. He submitted that the letters of consent executed by the Respondents confer clear authority on the Appellants to recover percolation water charges. He pointed out that however, the Appellants could not lead evidence to prove the said letters of consent and therefore, a request was made to the Appellate Court to remand the suit to the Trial Court to enable the Appellants to lead evidence. He submitted that the Respondents are the members of the Appellant No.2-Society and therefore, a civil suit was clearly barred in view of the provisions of the Section 91 of the Maharashtra Co-operative

Societies Act, 1960.

3. I have considered the submissions. In the courts below the Appellants have claimed right to recover percolation water charges only on the basis of alleged consent letters signed by the Respondents. The said right is not claimed on any other basis. Admittedly, the consent letters were not proved in accordance with law. Therefore, the Courts below have rightly held that the Appellants have not established their right to recover charges from the Respondents.

4. The request for remand is also considered by the Appellate Court. The Appellate Court found that the original Plaintiffs closed their evidence on 17th August 2002 and the Judgment of the Trial Court was delivered nearly one year thereafter i.e. 5th August 2003. It is observed that during the span of one year no efforts were made by the Appellants to apply for setting aside the order of the trial Court. No attempts were made by the Appellants to lead evidence for a period of one year. It must be borne in mind that the Appellant No.2 is a co-operative sugar factory and therefore the Appellate Court rightly held that there was negligence on the part of the Appellants in proceeding with the case and therefore, no case is made out for passing the order of remand.

5. So far as the third contention is concerned, I find that

the same is not specifically raised in the Courts below. For coming to the conclusion that the jurisdiction of the Civil court was ousted, it was necessary for the Appellant No..2 to lead evidence to prove that the original Plaintiffs are members of the Appellant No.2 and that the dispute involved in the suit is a touching business of the society. However, no evidence has been led by the Appellant No.2. In absence of any factual foundation, issue regarding jurisdiction cannot be decided as in this case decision on issue regarding jurisdiction requires proof of some factual aspects. No substantial question of law arises.

6. At this stage, Shri Borkar submitted that if this Court does not entertain the Second Appeal, the right of the Appellants to recover the percolation water charges from other members will be concluded. There is no substance in the said submission. In the present case the right to recover the percolation water charges is claimed only on the basis of the consent letters. The finding of the Courts below is that the said right could not be established as the alleged consent letters were not proved in the evidence.

Hence, there is no substance in this contention.

7. Second Appeal is dismissed with no order as to costs.

Judge.